

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
EXECUTIVE SECRETARY

Noemí Merced

Petitioner

Unión de Periodistas, Artes Gráficas y Ramas  
Anexas, Local33225 (UPAGRA)

Union

Publi-Inversiones de Puerto Rico D/B/A  
El Vocero

Employer

NATIONAL LABOR RELATIONS BOARD  
SUBREGION 24

Case 12-RD-221192

PETITIONER'S REQUEST FOR  
REVIEW

REQUEST FOR REVIEW

TO THE HONORABLE NATIONAL RELATIONS BOARD:

NOW COMES petitioner, Noemí Merced, through the undersigning legal representation, and respectfully states, requests and prays:

I. INTRODUCTION

On March 30, 2018 the United States Court of Appeals, for The District of Columbia Circuit, entered Judgment in Case No/ 17-1102, *Publi-Inversiones de Puerto Rico, Inc., d/b/a El Vocero de Puerto Rico (Petitioner) v. National Labor Relations Board, (Respondent)*, F. 3d 142 (2018) denying the Petition for Review and granting the cross-application for enforcement of an order of the National Labor Relations Board given in *Publi-Inversiones de Puerto Rico, Inc., d/b/a El Vocero de*

*Puerto Rico*, 365 NLRB No. 29 (2017), as modified by 365 NLRB No. 65 (2017). The court confirmed the National Labor Board's decision, which concluded that Publi-Inversiones is the successor employer to the newspaper's previous owner, Caribbean International News Corporation, d/b/a El Vocero de Puerto Rico, Inc.; and thus violated the law by refusing to acknowledge th Union as the representative of the employees; and, failing to recognize the Union as the labor representative of the employees; and, refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of the employees.

The now affirmed NLRB Order required the employer to bargain with the Union, in regards to: wages; pay rate; working hours; among other issues involving conditions of employment of the employees at El Vocero and the employer-employee relations. Publi-Inversiones notified employees of said decision on April 17, 2018, and dates were set to start bargaining with the Union.

On May 31, 2018, petitioner Noemí Merced filed a petition or request for decertification (RD) of the collective-bargaining representative of the employees at her workplace, El Vocero de Puerto Rico, one of the two main newspapers in Puerto Rico, owned and operated by Publi-Inversiones de Puerto Rico, Inc. (*hereinafter*, El Vocero or the Employer or Publi-Inversiones). The collective-bargaining representative is Unión de Periodistas, Artes Gráficas y Ramas Anexas, Local33225 (*hereinafter* UPAGRA or the Union). It must be noted that even though she appears as the named petitioner by herself, it was filed in the name of herself and the other twenty-nine (29) union member employees, who signed the letter stating their desire for decertification of UPAGRA as their representative, from May 29-31, 2018, which was included with the petition. Said number signees, not only surpass the thirty percent (30%) of union member employees, but represent more than seventy percent (70%) of all union member employees.

On June 12, 2018, twelve (12) days after the filing of the RD, the Region dismissed the Petition without hearing; without asking for further arguments; opportunity to show cause or provide evidence; without adequate explanation; without the benefit of elections; and without providing a remedy to the thirty (30) signees of the petition letter who do not feel represented by UPAGRA and do not want UPAGRA to represent them. The decision was signed by Vanessa García, Officer in Charge, in place of Regional Director, David Cohen, and it stated “as a result of the investigation, I find that further proceedings are not warranted”. The “reasons” given were:

“The court decree enforced the Board's conclusions that the Employer, as a successor employer to Caribbean International News Corporation, d/b/a El Vocero de Puerto Rico, Inc., violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the above-described unit of employees, and by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Employer's unit employees. The enforced Board Order requires the Employer, to bargain with the Union with respect to rates of pay, wages, hours and other terms and conditions of employment of the employees in the above unit and, if an understanding is reached, embody such understanding in a signed agreement; to provide the Union with requested information; and to post a remedial Notice to Employees for 60 days. The Employer has certified to the Regional Office that it posted the Notice to Employees on April 17, 2018, and provided the Union with requested information on May 2, 2018. On May 2, 2018, the Employer further certified that it was scheduled to start bargaining with the Union on May 14, 2018.”

On June 25, 2018, appearing party filed a Request for Review to the Executive Secretary of the NLRB.<sup>1</sup> In said Request, Petitioner raised substantial questions of law and compelling reasons for reconsideration of an important policy, as well as due process issues and workers right to be represented by a representative of their choosing. On June 26, 2018, the employer also filed a Request for Review, asking mainly for reconsideration of an important policy.

Surprisingly, on June 9, 2018, after UPAGRA missed their June 6, 2018 extended filing date,

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<sup>1</sup>We include copy of the Request for Review filed as an attachment.

the parties received a “Corrected Dismissal” under the name of Regional Director, David Cohen, but without a signature. It was basically a longer version of the June 12 dismissal, but adds the following paragraph, not included in the June 9 Dismissal:

“A Board Order requiring bargaining as a remedy for unfair labor practices bars any challenge to the union’s status for a reasonable period of time. *Frank Bros. v. NLRB*, 321 U.S. 702, 705 (1944); *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), *enfd.* 310 F.3d 209 (D.C. Cir. 2002); *Caterair International*, 322 NLRB 64 (1996). Thus, the Supreme Court stated, “... a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.” *Frank Bros. v. NLRB*, 321 U.S. at 705. The Employer has certified to the Regional Office that it posted the Notice to Employees on April 17, 2018, and provided the Union with requested information on May 2, 2018. On May 2, 2018, the Employer further certified that it was scheduled to start bargaining with the Union on May 14, 2018. At the time the petition herein was filed the 60 day Notice posting period in Case 12-CA-120344 had not expired and even assuming that bargaining started on May 14, 2018, the parties had been bargaining for less than one month. I find that a reasonable period of time for bargaining has not elapsed, and no question concerning representation can be raised at this time.”

As was raised in the Request for Review of the June 12 dismissal, since the case was dismissed without hearing and without receiving evidence or testimonies, the Executive Secretary of the Board is in the same position as the Regional Director to review this case.

## II. MATERIAL AND PROCEDURAL FACTS

1. Petitioner Noemí Merced as well as the other twenty nine (29) signees of the “petition letter”, are all employees of El Vocero and members of UPAGRA.
2. The Petition was supported by 30 out of 41 union member employees at the referred bargaining unit, which accounts for around seventy three percent (73%) of the bargaining unit.
3. The petition letter states that all signees want to express that they do not desire to continue

with the present union or bargaining representative in negotiations or bargaining process or any other matter related to employee representation with the employer. And specifically it clearly states that they do not want to be represented by UPAGRA.

4. On May 31, 2018, the same day the Petition was filed, the National Labor Relations Board set the date of the election regarding decertification, for June 21, 2018,<sup>2</sup> and a Notice for Representation Hearing was entered and notified, setting said Hearing for June 8, 2018.

5. On June 1st, 2018, the employer notified employees with the corresponding Notice of Petition for Election, sent by the National Labor Relations Board, Sub-region 24, on that date.

6. On June 6, 2018, at 11:41 AM, Field Examiner Cliff Ramos, notified via e-mail, that “the Region was planning to send parties a ‘Notice to Show Cause’ so they could explain why further processing of the petition should be granted”, going on to notify that the June 8, 2018 hearing was “held in abeyance pending a determination”, after getting the responses to the planned Notice to Show Cause.

7. On that same day, but in the early afternoon, the Field Examiner called the petitioner to persuade her to file a voluntary request for dismissal without prejudice, because if she didn’t the Region would proceed to dismiss it. He gave her until 3 PM of the next day, June 7, to notify her decision.

8. On the morning of June 7, the Field Examiner reiterated his request, *via* phone, even though it contradicted the June 6 e-mail communication and all the previous acts by the Region regarding the Petition.

9. On the afternoon of June 7, petitioner’s legal representative informed the Field Examiner,

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<sup>2</sup>Dependent on the success of the Petition.

that petitioner **would not** file or ask for a voluntary dismissal.

10. Contrary to what was informed, the Notice to Show Cause, never arrived before de June 7, 5 PM deadline the Field Examiner had set. It did not arrive on June 8 or June 11 either.

11. On June 12, 2018, the Region notified its decision, dismissing the captioned case, regarding the request for decertification filed by the petitioner.

12. Since the March 30, 2018 judgment, the subsequent commencement of the bargaining negotiations with Publi-Inversiones and up until the filing of the Petition, there was no effort from the Union to gather or assemble all the bargaining unit employees or communicate the goals, strategies and methods for the negotiations, nor were the members consulted in regards to their wants and needs as employees at El Vocero, for the mandated negotiations.

13. Petitioner and signees do not want to be represented by UPAGRA; do not feel represented by UPAGRA; and, do not feel that their interests are being represented or taken into account.

14. Negotiations between Employer and the Union were set to begin on May 14, 2018.

15. On July 9, 2018, the Region notified a “Corrected Dismissal”, after Requests for Review had already been filed and the Union had missed its extended filing date.

## II. ARGUMENT

Petitioner believes that no value should be assigned to the July 9, 2018 “Corrected Dismissal”, since it was notified after parties had requested review of the original dismissal and after time to file oppositions had elapsed without any opposition filed. Accordingly when the Region notified its “Corrected Dismissal”, the decision was already out of their hands and in the hands of the Executive Director of the NLRB, pending a decision. The case was no longer under the Region’s jurisdiction.

Therefore, we ask and pray that the July 9 “Corrected Dismissal” is treated as if it was never entered and notified. An that the NLRB continues its consideration of the Requests for Review filed by parties regarding the June 12, 2018 Dismissal.

In the alternative, if the Board decides that the July 9, 2018 “Corrected Dismissal” was a timely one by the Region, Petitioner hereby adopts by reference the content of its Request for Review filed on June 25, 2018, since the facts remain unaltered and the questions regarding the dismissal and arguments against said dismissal remain unchanged. Petitioner adopts it by reference as if said content was included in this document.

WHEREFORE appearing party asks and prays that the Executive Secretary of the Board:

A) Treats the July 9, 2018 “Corrected Dismissal” as if it was never entered or notified by the Region;

B) Grants the request for review of the June 12, 2018 decision notified by the Regional Board and proceeds to revoke the dismissal ordered by the Regional Director and instead **grants the Petition filed** for decertification of the bargaining representative and orders the corresponding election at the bargaining unit; or,

C) In the alternative the Petitioner asks and prays that the dismissal be revoked and the case be sent back to the Region, to continue the regular and ordinary proceedings.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico on this 23rd day of July 2018.

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#### CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, a true and correct copy of the foregoing Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail to:

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Officer in Charge  
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In San Juan, Puerto Rico on this 23rd day of July 2018.

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